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OFFICE OF PETITIONS

In re Patent No. 7,481,645 : DECISION ON REQUEST
Helou, Jr et al. : FOR
Issue Date: January 27, 2009 : RECONSIDERATION OF
Application No. 10/608,441 : PATENT TERM ADJUSTMENT
Filed: June 27, 2003 : and
Atty Docket No.40134.8001.US00: NOTICE OF INTENT TO ISSUE
: CERTIFICATE OF CORRECTION

This is a decision on the petition filed on March 27, 2009, which is being treated as a petition under 37 CFR 1.705(d) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by nine hundred eighty-three (983) days.

The petition to correct the patent term adjustment indicated on the above-identified patent is **GRANTED to the extent indicated herein**. The patent term adjustment is corrected to indicate that the term of the above-identified patent is extended or adjusted by nine hundred forty-four (944) days.

The B delay is 562 days, not 563 days. As the period from the filing date of the request for continued examination (RCE) to the issue date of the patent is not included in the period of B delay, the over three year period began on June 28, 2006, and ended on January 10, 2008, the day before the RCE was filed. See 35 U.S.C. § 154(b)(1)(B)(i).

Further, a review of the record reveals that an additional period of reduction of 38 days pursuant to 37 CFR 1.704(c)(8) should have been entered. 37 CFR 1.704(c) provides, in pertinent part, that:

Circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping:

(8) Submission of a supplemental reply or other paper, other than a supplemental reply or other paper expressly requested by the examiner, after a reply has been filed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date the initial reply was filed and ending on the date that the supplemental reply or other such paper was filed;

After the filing of a response on July 14, 2008, applicants filed three other papers. Specifically, applicants filed Information Disclosure Statements (IDS) on July 15, 2008; July 17, 2008; and August 21, 2008. Patentees do not address these IDSs on instant application for patent term adjustment. The record supports a conclusion that the IDSs were not expressly requested by the examiner. Further, none of the IDSs included a §1.704(d) statement. Thus, the IDSs remain supplemental papers within the meaning of 37 CFR 1.704(c)(8). Accordingly, the patent term adjustment should have been reduced by 38 days, the number of days beginning on the day after the date the initial reply was filed, July 15, 2008, and ending on the date that the third supplemental paper was filed, August 21, 2008.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by nine hundred forty-four (944) days.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,481,645 B2

DATED : January 27, 2009

DRAFT

INVENTOR(S) : Helou, Jr et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 420 days

Delete the phrase "by 420 days" and insert – by 944 days--